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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Jason Ryan Sherbino,

Defendant.

Case No. 2:16-cr-00226-APG-CWH

ORDER

12 Presently before the court is the government's Motion to Strike Defendant Sherbino's
13 Notice of Assertion of Right to be Present in Court Unshackled (ECF No. 38), filed on June 14,
14 2017. Defendant filed a response (ECF No. 40) on July 11, 2017. The government did not file a
15 reply.

16 In *United States v. Sanchez-Gomez*, the Ninth Circuit Court of Appeals found that "[b]efore
17 a presumptively innocent defendant may be shackled, the court must make an individualized
18 decision that a compelling government purpose would be served and that shackles are the least
19 restrictive means for maintaining security and order in the courtroom." *United States v.*
20 *Sanchez-Gomez*, 859 F.3d 649, 661 (9th Cir. 2017). The court reasoned that this right "respects our
21 foundational principle that defendants are innocent until proven guilty." *Id.*

22 Defendant relied on *Sanchez-Gomez* in filing his "Notice of Assertion of Right to be Present
23 in Court Unshackled." (Notice (ECF No. 37).) As required by *Sanchez-Gomez*, the court will
24 "decide whether the stated need for security outweighs the infringement on a defendant's right."
25 *Id.* at 666. The court will announce its individualized determination regarding shackling either
26 before or at the commencement of Defendant's next court appearance. Further, the court will deny
27 the government's motion to strike Defendant's notice. Requiring Defendant to file a motion to be
28 presented in court unshackled would place the burden on a defendant to establish that he should not

1 be shackled and would effectively disregard an individual's constitutional "right to be free from
2 unwarranted restraints." *See id* at 660.

3 IT IS THEREFORE ORDERED that the government's Motion to Strike Defendant
4 Sherbino's Notice of Assertion of Right to be Present in Court Unshackled (ECF No. 38) is
5 DENIED.

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7 DATED: December 5, 2017

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10 **C.W. Hoffman, Jr.**
11 **United States Magistrate Judge**
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